

IC 28-11-4

Chapter 4. Enforcement Powers of the Department

IC 28-11-4-1

Application of IC 4-21.5

Sec. 1. (a) Except as provided in subsection (b), IC 4-21.5 does not apply to a proceeding under this chapter.

(b) IC 4-21.5-5 applies to judicial review of a final order of the department under this chapter.

As added by P.L.33-1991, SEC.56.

IC 28-11-4-2

Unsafe or unsound practices or violations of law; notice of charges

Sec. 2. If the director has reasonable cause to believe that a financial institution:

(1) has engaged, is engaging, or will engage in an unsafe or unsound practice in conducting the business of the financial institution; or

(2) has violated, is violating, or will violate a:

(A) statute;

(B) rule;

(C) condition imposed in writing by the director in connection with the granting of an application or other request by the financial institution; or

(D) written agreement entered into with the department;

the director may issue and serve upon the financial institution a notice of charges of the practice or violation.

As added by P.L.33-1991, SEC.56.

IC 28-11-4-3

Unsafe or unsound practices or violations of law by directors, officers, or employees of financial institutions

Sec. 3. (a) If the director determines that a director, an officer, or an employee of a financial institution has:

(1) committed a violation of a statute, a rule, a final cease and desist order, any condition imposed in writing by the director in connection with the grant of any application or other request by the financial institution, or any written agreement between the financial institution and the director;

(2) engaged or participated in an unsafe or unsound practice in connection with the financial institution;

(3) committed or engaged in an act, an omission, or a practice that constitutes a breach of fiduciary duty as director, officer, or employee; or

(4) been charged in a complaint, an indictment, or an information with the commission of or participation in a crime involving dishonesty or breach of trust that is punishable by imprisonment for a term exceeding one (1) year under federal law or the law of a state;

the director, subject to subsection (b), may issue and serve upon the

officer, director, or employee a notice of the director's intent to issue an order removing the person from the person's office or employment, an order prohibiting any participation by the person in the conduct of the affairs of any financial institution, or an order both removing the person and prohibiting the person's participation.

(b) A violation, practice, or breach specified in subdivision (a) is subject to the authority of the director under subsection (a) if the director finds both of the following:

(1) By reason of the violation, practice, or breach:

(A) the financial institution has suffered or will probably suffer substantial financial loss or other damage; or

(B) the interests of the financial institution's depositors could be seriously prejudiced by reason of the violation, practice, or breach of fiduciary duty.

(2) The violation, practice, or breach:

(A) involves personal dishonesty on the part of the officer, director, or employee; or

(B) demonstrates a willful or continuing disregard by the officer, director, or employee for the safety and soundness of the financial institution.

(c) A person convicted of a:

(1) felony; or

(2) crime involving dishonesty or breach of trust;

may not serve as a director, an officer, or an employee of a financial institution, or serve in any similar capacity, unless the person obtains the written consent of the department.

(d) A financial institution that willfully permits a person to serve the financial institution in violation of subsection (b) or (c) is subject to a civil penalty of five hundred dollars (\$500) for each day the violation continues. A civil penalty paid under this subsection must be deposited into the financial institutions fund established by IC 28-11-2-9.

As added by P.L.33-1991, SEC.56. Amended by P.L.262-1995, SEC.76; P.L.258-2003, SEC.19.

IC 28-11-4-4

Contents of notice; hearing date; hearing official record; removal or suspension of director, officer, or employee

Sec. 4. (a) A notice issued under this chapter must:

(1) contain a statement of the facts constituting the alleged practice, violation, or breach;

(2) state the facts alleged in support of the violation, practice, or breach;

(3) state the director's intention to enter an order under section 3(a) of this chapter;

(4) be delivered to the board of directors of the financial institution;

(5) be delivered to the officer, director, or employee concerned; and

(6) specify the procedures that must be followed to initiate a

hearing to contest the facts alleged.

(b) If a hearing is requested within ten (10) days after service of the written notice, the director or designee of the director shall hold a hearing concerning the alleged practice, violation, or breach. The hearing shall be held not later than forty-five (45) days after receipt of the request. The director or designee of the director, based on the evidence presented at the hearing, shall enter:

- (1) a final order under section 7 of this chapter for the immediate removal of the officer, director, or employee affected;
- (2) a final order under section 7 of this chapter prohibiting further participation by the officer, director, or employee, in any manner, in the conduct of affairs of any financial institution;
- (3) a final order consisting of both an order described in subdivision (1) and an order described in subdivision (2);
- (4) a reprimand of the individuals, entities, or other persons concerned; or
- (5) a dismissal of the entire matter.

(c) If no hearing is requested within the time specified in subsection (b), the director may proceed to issue a final order described in subsection (b)(1), (b)(2), or (b)(3) on the basis of the facts set forth in the written notice.

(d) An officer, director, or employee who is removed from a position under a removal order that has become final may not participate in the conduct of the affairs of any financial institution without the approval of the director.

(e) The director may, for the protection of the financial institution or the interests of its depositors, suspend from office or prohibit from participation in the affairs of the financial institution an officer, a director, or an employee of a financial institution who is the subject of a written notice served by the director under subsection (a). A suspension or prohibition under this subsection becomes effective upon service of the notice. Unless stayed by a court in a proceeding authorized by subsection (f), the notice shall remain in effect pending completion of the proceeding under the written notice served under subsection (a) and until the effective date of an order entered by the director under subsection (b) or (c). Copies of the notice shall also be served upon the financial institution or subsidiary of which the person is an officer, a director, or an employee.

(f) Not more than ten (10) days after an officer, a director, or an employee has been suspended from office or prohibited from participation in the conduct of the affairs of the financial institution or subsidiary under subsection (e), the officer, director, or employee may apply to a court having jurisdiction for a stay of the suspension or prohibition pending completion of the proceedings under subsection (b), and the court may stay the suspension or prohibition.

(g) The department shall maintain an official record of a proceeding under this chapter.

As added by P.L.33-1991, SEC.56. Amended by P.L.122-1994, SEC.109; P.L.258-2003, SEC.20.

IC 28-11-4-5

Consent to a final order

Sec. 5. If the department enters into a consent to a final order under section 7 of this chapter with a financial institution, director, officer, or employee, the director is not required to issue and serve a notice of charges upon the financial institution, director, or officer under section 2 or 3 of this chapter. A consent agreement may be negotiated and entered into before or after the issuance of a notice of charges.

As added by P.L.33-1991, SEC.56. Amended by P.L.122-1994, SEC.110; P.L.262-1995, SEC.77; P.L.258-2003, SEC.21.

IC 28-11-4-6

Temporary order

Sec. 6. (a) If the department determines that an alleged practice, a violation, or an act specified in a notice served under this chapter is likely to:

- (1) cause insolvency of the financial institution;
- (2) cause substantial dissipation of assets or earnings of the financial institution; or
- (3) otherwise seriously prejudice the interests of the depositors of the financial institution;

the department may issue a temporary order without a hearing.

(b) A temporary order may require the financial institution to cease and desist from the practice or violation.

(c) A temporary order is effective upon service and remains effective and enforceable until the earliest of the following:

- (1) The issuance of an injunction by a court under subsection (d).
- (2) The dismissal of the charges by the department.
- (3) The effective date of a final order under section 7 of this chapter.

(d) A financial institution served with a temporary order under this section may apply to a court having jurisdiction for an injunction to stay, modify, or vacate the order.

As added by P.L.33-1991, SEC.56. Amended by P.L.258-2003, SEC.22.

IC 28-11-4-7

Final order

Sec. 7. (a) If the department finds that the conditions specified in section 2 or 3 of this chapter have been established, the department may issue a final order.

(b) A final order must include separately stated findings of fact and conclusions of law for all aspects of the order.

(c) A final order may do any of the following:

- (1) Require the financial institution and its directors, officers, employees, and agents to do any of the following:
 - (A) Cease and desist from the practice or violation.
 - (B) Take affirmative action to correct the conditions

resulting from the practice or violation.

(2) Suspend or prohibit a director, an officer, or an employee from participating in the affairs of a financial institution or subsidiary.

(3) Impose a civil penalty not to exceed the amount specified in section 9 of this chapter.

(d) A final order shall be issued in writing within ninety (90) days after conclusion of the hearing, unless this period is waived or extended with the written consent of all parties or for good cause shown. A final order issued under this chapter may be made public by the department.

(e) If the financial institution, director, or officer does not appear individually or by a duly authorized representative at the hearing, the financial institution, director, or officer is considered to have consented to the issuance of a final order.

As added by P.L.33-1991, SEC.56. Amended by P.L.258-2003, SEC.23.

IC 28-11-4-8

Effectiveness of final order; stay, modification, or vacation

Sec. 8. (a) A final order issued under this chapter is effective at the expiration of ten (10) days after service of the order. However, a final order issued upon consent under section 7(e) of this chapter is effective at the time specified in the order.

(b) A final order remains effective and enforceable as provided in the order.

(c) The department or a reviewing court may stay, modify, or vacate a final order.

As added by P.L.33-1991, SEC.56.

IC 28-11-4-9

Civil penalty

Sec. 9. (a) A civil penalty imposed on a director or an officer under section 7 of this chapter may not exceed fifteen thousand dollars (\$15,000) for each practice, violation, or act found to exist in the final order.

(b) In determining the amount of a civil penalty assessed under section 7 of this chapter, the following factors shall be considered:

(1) The appropriateness of the civil penalty with respect to the financial resources and good faith of the individual charged.

(2) The gravity of the practice, violation, or act.

(3) The history of previous practices, violations, or acts.

(4) The economic benefit derived by the individual from the practice, violation, or act.

(5) Other factors that justice requires.

(c) A financial institution may not indemnify a director or an officer for a civil penalty imposed under section 7 of this chapter.

(d) Civil penalties shall be deposited in the fund.

As added by P.L.33-1991, SEC.56.

IC 28-11-4-10**Enforcement of order**

Sec. 10. The department may enforce an order issued under this chapter by applying for appropriate relief to a court having jurisdiction.

As added by P.L.33-1991, SEC.56.

IC 28-11-4-11**Persons removed from office; participation in management of financial institution; Class D felony**

Sec. 11. An individual who:

- (1) was removed from office under section 6 or 7 of this chapter; and
- (2) after removal, knowingly or intentionally participates, directly or indirectly, in the management of the financial institution;

commits a Class D felony.

As added by P.L.33-1991, SEC.56.

IC 28-11-4-12**Enforcement powers exercised against affiliate of financial institution**

Sec. 12. (a) The director of the department may exercise the enforcement powers of this chapter against an affiliate of a financial institution as if the affiliate were a financial institution if the director determines that a practice of the affiliate could cause either:

- (1) the financial institution to suffer substantial loss or other damage; or
- (2) the interests of the financial institution's depositors to be seriously prejudiced by reason of a violation, practice, or breach of fiduciary duty.

(b) The director of the department may issue and serve upon the director or the officer of the affiliate a notice of charges of the practice, violation, or act.

(c) For purposes of this section, affiliate has the meaning set forth in IC 28-1-18.2.

As added by P.L.215-1999, SEC.8.